

SECTION 13 -- SUBSEQUENT ACTION

13.1 Compensation. In the event that after the Effective Date any court, agency, commission, legislative body, or other authority of competent jurisdiction takes any action or enters any judgment which has a materially adverse effect, with respect to the City or the Company, on the compensation or other payments to be made by the Company pursuant to Section 8 of this Agreement, then the Company and the Board shall enter into negotiations to amend this Agreement so as to restore the parties to a position equivalent to that which they held prior to said action or declaration. In connection with such negotiations, the Board and the Company shall consider whether the circumstances existing at that time are such that the parties can be made whole.

13.2 Procedure for Subsequent Invalidity.

13.2.1 Declaration of Invalidity or Injunction.

Except as provided in Section 13.1 hereof, in the event that after the Effective Date any court, agency, commission, legislative body, or other authority of competent jurisdiction:

(a) declares this Agreement invalid, in whole or in part, or

(b) requires the City or Company either to:
(i) perform any act which is inconsistent with any provision of this Agreement or (ii) cease performing any act required by any provision of this Agreement, then the Company or the City, as the case may be, shall promptly notify the other party in writing of such fact.

13.2.2 Continued Compliance. After the occurrence of the events described in Section 13.2.1, the Company and the City shall continue to comply with all provisions of this Agreement, including the affected provision, until the validity of the declaration or requirement has been finally adjudicated or a court orders the Company or the City to comply with such declaration or order, provided that either party may comply with any court order which is not stayed during the pendency of any appeal leading to said final adjudication.

13.2.3 Negotiations to Amend Agreement. In the event that a court so orders the City or the Company to comply with such declaration or requirement, then the Board and the Company shall determine whether such compliance by either party will materially frustrate or impede the ability of either party to carry out its obligations pursuant to, and for the purposes of, this Agreement. If the Board and the Company so determine, then the Company and the Board shall enter into negotiations to amend this Agreement, so as to enable the parties to be made whole, in

a manner consistent with said declaration or requirement, by restoring the parties to a position equivalent to that which they held prior to such declaration or requirement. In connection with such negotiations, the City and the Company shall consider whether the circumstances existing at that time are such that parties should not or cannot be made whole.

13.2.4 Right to Relief. Nothing in the foregoing shall limit the Company's right to relief under Section 8.7.

13.3 Waiver. In addition to complying with Sections 13.1 and 13.2 hereof, in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction: (a) declares this Agreement invalid, in whole or in part, or (b) requires the Company or the City either to: (i) perform any act which is inconsistent with any provision of this Agreement or (ii) cease performing any act required by any provision of this Agreement, the Company and the City expressly agree nevertheless to comply with the terms of this Agreement to the maximum extent permitted by law and expressly waive, to the maximum extent permitted by law, any claim they may then or thereafter have as to the validity or enforceability of the terms of this Agreement. To the fullest extent it may effectively do so under applicable law, the Company waives any provision of law which renders any provision hereof invalid, illegal or unenforceable in any respect. If any

provision of this Agreement is held to be invalid, illegal or unenforceable and the waiver in the immediately preceding sentence is ineffective to eliminate such invalidity, illegality or unenforceability, the Director and the Company shall negotiate, in good faith, a modification, so that the intent and goal of the invalid, illegal or unenforceable provision is reflected herein to the maximum extent feasible under applicable law. In the event the parties are unable to negotiate a mutually satisfactory modification of the Agreement, they may agree to terminate it in accordance with Section 12.5 hereof.

SECTION 14 -- MISCELLANEOUS

14.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in said Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices.

14.2 Action Taken by City. Any action to be taken by the Board and/or the Director pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter and the Rules of Procedure of the Board, as said Charter

or Rules may be amended or modified throughout the term of this Agreement. Whenever, pursuant to the provisions of this Agreement, the City, the Company, or any other Person is required or permitted to take any action, including, without limitation, the making of any request or the granting of any consent, approval, or authorization, the propriety of said action shall be measured against the standard of reasonableness such that each such action shall be undertaken in a reasonable manner, unless this Agreement authorizes the City, the Company, or any other Person to take such action in its sole discretion.

14.3 Compliance with Agreement. In any dispute, claim or proceeding between the City and the Company, including but not limited to any judicial proceeding between the parties to this Agreement, the Company shall have the burden of demonstrating its compliance with each term and condition of this Agreement material to the dispute.

14.4 Entire Agreement. This Agreement, including all Appendices hereto, embodies the entire understanding and agreement of the City and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the City and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and

any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Company.

14.5 Delays and Failures Beyond Control of Company.

Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure where the Company has exercised all due care in the prevention thereof, or other causes or events, to the extent that such causes or other events are beyond the control of the Company. In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct said cause(s). The Company agrees that in correcting said cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall notify the Director in writing of the occurrence of an event covered by this Section 14.5 within five (5) business days of the date upon which the Company learns or should have learned of its occurrence.

14.6 Notices. Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company shall be in writing (except the notice referred to in Sections 12.3(a)(iv) and 12.4.1(u)) and shall be sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to its office located at 50 Broadway, New York, N.Y. 10004 and to Prentice Hall Corporation System, Inc., 1 Gulf & Western Plaza, New York, NY 10023, or to such other location in New York City as the Company may designate from time to time. Every communication from the Company shall be sent to the person, agency or department designated in the applicable section of this Agreement, unless it is to "the City" or the "Board," in which case, such communication shall be sent to the Director and the Corporation Counsel. The mailing of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given when mailed. Any notice the Director is required to give to the Company pursuant to Section 12.4.1 for which a cure period is ten (10) days or less, must be served by personal delivery, overnight mail service or facsimile transmission, and such notice shall be deemed given when it is received.

14.7 General Representations, Warranties, and Covenants of the Company. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), that, as of the Closing and the Effective Date:

14.7.1 Organization, Standing and Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of New York and in the City. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's Certificates of Incorporation, as amended to date, and By-Laws, as amended to date, have been delivered to the Director, and are complete and correct. The Company is qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which it conducts business.

14.7.2 Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Company has furnished the City with a certified copy of the resolutions of its Board of Directors authorizing the execution and delivery of this Agreement. This Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to approve, authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to approve and authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except the fulfillment of the conditions specified in Section 2.2.3 hereof. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

(a) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) the Certificate of Incorporation, By-Laws or other similar charter or governing document of the Company or to the Company's knowledge, any shareholders' agreement or other similar agreement among security holders or other owners of the Company, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance or security interest upon the property and assets of the Company; or

(c) terminate, modify or accelerate, or give any third party the right to terminate, modify or accelerate, any provision or term of any contract, arrangement, agreement, license agreement or commitments, except for any event specified in (a) or (b) above which individually or in the aggregate would not have a material and adverse effect on the business, properties or financial condition of the Company or the System.

14.7.3 Consent. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority is required for the valid execution and delivery of this Agreement or any other agreement or instrument, if any, executed or delivered in connection herewith.

14.7.4 Compliance with Law. To the best of the knowledge of the Company, it is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the System and has filed, has obtained or will file for all government licenses, permits, and authorizations necessary for the operation and maintenance of the System.

14.7.5 Litigation; Investigations. There is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim (including, without limitation, proceedings with respect to unfair labor practice matters or labor organization activity matters), pending or threatened against the Company, at law or in equity, or before any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality or involving the granting of a temporary or permanent injunction against the Company that, if granted, would have a material adverse effect on the business, operation, properties, assets or financial condition of the Company or the System, or which questions the validity or prospective validity of this Agreement, or of any

essential element upon which this Agreement depends, or of any action to be taken by the Company. No investigation or review by any governmental entity with respect to the Company relating to the System or any of the transactions contemplated hereby is pending or is threatened against the Company, nor has any governmental entity indicated to the Company an intention to conduct the same. The Company is not subject to any outstanding order, writ, injunction or decree which materially and adversely affects the business, operations, properties, assets or financial condition of the System.

14.7.6 No Other Business Plan. The Company has no business plan with respect to the System other than the documents submitted in writing to the Director in connection with the Petition prior to the date hereof, which accurately reflect the Company's belief with respect to the Company's anticipated performance.

14.7.7 Fees. The Company has paid all franchise, license or other fees and charges which have become due pursuant to any franchise or permit and has made adequate provisions for any such fees and charges which have accrued, except where contested in good faith and by appropriate proceedings.

14.7.8 Licenses and Permits. The Company has duly secured or will promptly seek to obtain all necessary permits and licenses in connection with the operation, maintenance or repair of the System, or any part thereof, from, and has filed all required registrations, applications, reports and other documents with, the FCC, the PSC, telephone companies and other entities exercising jurisdiction over the provision of communications services or the construction of delivery systems therefor. Further, no event has occurred which could (a) result in the revocation or termination of any such license or authorization, or (b) materially and adversely affect any rights of the Company. No event has occurred which permits or, after notice or lapse of time or both, would permit, revocation or termination of any such license or which materially and adversely affects or, so far as the Company can now foresee, will materially and adversely affect the System or any part thereof. The Company has obtained or will promptly seek to obtain all leases, easements and equipment rental or other agreements necessary for the maintenance and operation of the System.

14.8 Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the franchise granted herein, the Company agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing.

14.8.1 Compliance with Laws; Licenses and Permits.

The Company shall comply with: (a) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the PSC and the FCC) and any other federal or state agency or authority of competent jurisdiction affecting the Agreement, the franchise, and the System; and (b) all local laws and all rules, regulations, orders, or other directives of the City, the Board, and the Director issued pursuant to and in accordance with this Agreement. The Company shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, replace or repair the System, or any part thereof.

14.8.2 Maintain Corporate Existence. The Company will preserve and maintain its corporate existence, its business, and all of its rights and privileges necessary or desirable in the normal conduct of said business, unless any such change shall not have a material and adverse impact on the Company's ability to construct, operate, maintain and upgrade the System as provided herein or fulfill the obligations of the Company hereunder. The Company shall maintain its good standing in its state of incorporation and continue to qualify to do business and remain in good standing as a foreign corporation in each foreign jurisdiction in which it conducts business. The Company shall

conduct business in accordance with its Certificate of Incorporation and Bylaws, and shall comply with the material terms of all mortgages, indentures, leases, contracts and other agreements and instruments binding upon it except where contested in good faith and by appropriate proceedings.

14.8.3 Condition of System. All of the properties, assets and equipment of the City Fiber will be maintained in good repair, working order and good condition, except as provided in Appendix B.

14.9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the Company, its successors, and assigns.

14.10 No Waiver; Cumulative Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City under applicable law,

subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City at any other time. In order for any waiver of the City to be effective, it must be in writing. The failure of the City to take any action regarding a default or Event of Default by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such default or Event of Default which has not been cured, or with respect to any other default or Event of Default by the Company.

14.11 No Opposition.

14.11.1 Waiver of Contest. Except as to those matters which may subsequently be validly and finally preempted by federal or state law or regulation, the Company agrees that they will not, at any time, set up against the City any claim nor institute against the City any proceeding alleging that a condition or term of this Agreement is unreasonable, arbitrary, void, or otherwise unenforceable, or that the City had no power or authority to make such term or condition. By execution of this Agreement, the Company agrees not to contest the validity of the terms and conditions of this Agreement in their entirety or the processes and procedures pursuant to which the Agreement was

entered into and the franchise was granted are not consistent with applicable law.

14.11.2 Right to Challenge Actions. Notwithstanding anything in this Section or the Agreement to the contrary, the Company does not waive and shall not be deemed to have waived its right to challenge any action, inaction or determination made by the City pursuant to or in connection with this Agreement.

14.12 Partial Invalidity. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Except as provided in Sections 13.1, 13.2 and 13.3 hereof, such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.13 Headings. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder," and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise

requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender or number shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

14.14 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

14.15 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within that State.

14.16 Delegation of City Rights. The City reserves the right to delegate and redelegate from time to time any of its rights or obligations under this Agreement to any body, organization or official. Any such delegation by the City shall be effective upon written notice by the City to the Company of such delegation. Upon receipt of such notice by the Company, the Company shall be bound by all terms and conditions of the delegation not in conflict with this Agreement. Any such delegation, revocation or redelegation, no matter how often made,

shall not be deemed an amendment to this Agreement or require any consent of the Company.

14.17 Claims Under Agreement. The City and the Company agree that, except to the extent inconsistent with applicable law, any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in New York City ("Federal Court") or in a court of the State of New York located in the City and County of New York ("New York State Court"). To effect this Agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 14.20 hereof;

(b) With respect to any action between the City and the Company in New York State Court, the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a court of the State of New York outside New York County;

(c) With respect to any action between the City and the Company in Federal Court, the Company expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York; and

(d) If the Company commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

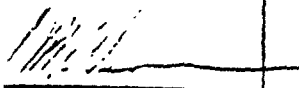
14.18 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by a written instrument, in writing, duly executed by the City and the Company, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the Board, as required by applicable law.

14.19 Maintain Office. The Company agrees to maintain an office in New York City throughout the term of this Agreement. Its office currently is located at: 50 Broadway, New York, N.Y. 10004. The Company will notify the Director in the event it moves its office.

14.20 Service of Process. Process may be served on the Company either in person, wherever the Company may be found, or by registered mail addressed to the Company at its office in the City or to Prentice Hall Corporation System, Inc., as set forth in Section 14.6 of this Agreement, to such other address as the Company may provide to the City in writing, or to the Secretary of State of the State of New York.

IN WITNESS WHEREOF, the party of the first part, by its Mayor, thereunto duly authorized by the Board of Estimate of said City, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and the party of the second part, by its officers thereunto duly authorized, has caused its corporate name to be hereunto signed

porate seal to be hereunto affixed as of the date and
above written.

S. TO FORM
CITY OF NEW YORK,

poration Counsel

By:


Mayor

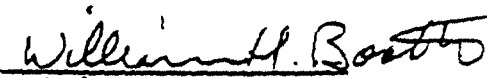
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METROPOLITAN FIBER SYSTEMS OF NEW YORK, INC.

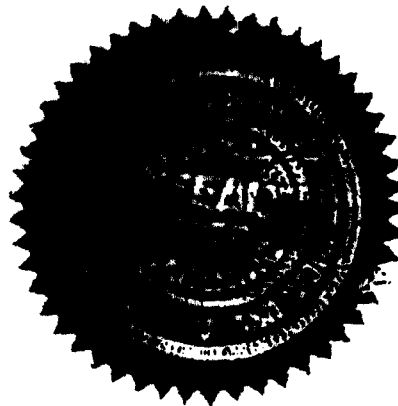
By:


(title)

Vice President


(title) Attorney

John M. Meigs
Assistant Secretary
and Chief General
Counsel



CITY OF NEW YORK
STATE OF NEW YORK

)
) ss:
)

I, Alfred J. Mullen, Jr., a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that David D. K., Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the 30 day of July, 1990, the said David D. K. being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as Mayor of the City of New York.

Given under my hand and seal, this 30th day of July, 1990.

Alfred J. Mullen, Jr.
Notary Public

ALFRED J. MULLEN, JR.
Notary Public, State of New York
No. 41-8052950
Qualified in Queens County
Commission Expires March 30, 1992

My Commission Expires: _____

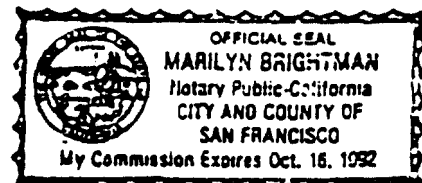
CITY OF ~~NEW YORK~~ San Francisco
STATE OF ~~NEW YORK~~ California ss:

I, The undersigned, a Notary Public in and for the State of ~~New York~~ California, residing therein, duly commissioned and sworn, do hereby certify that R. Douglas Bradbury of Throesolite, Sikee, Sikee to the above instrument, personally appeared before me in said State on the 28th day of June, 1990, the said R. Douglas Bradbury being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.

Given under my hand and seal, this 28th day of June, 1990.

Marilyn Brightman
Notary Public

My Commission Expires: 10-16-92



APPENDIX B-1

APPENDIX B-2